

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

CHAPIN, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 2012-77
)	
GREAT SOUTHERN WOOD PRESERVING)	
INCORPORATED, ET AL.,)	
)	
Defendants.)	
)	

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ORDER

GÓMEZ, J.

Before the Court is the Report and Recommendation of the Magistrate Judge.

I. FACTUAL AND PROCEDURAL HISTORY

Great Southern Wood Preserving Inc. ("GSWP") is an Alabama lumber wholesaler. It operates principally in Alabama. In addition to selling wood directly, it also provides chemical and pressure treatments to prevent lumber from decaying.

From on or about 2003 through on or about 2009, GSWP regularly sold treated lumber and provided lumber-treatment services to Putnam Family Properties, Inc., a Florida corporation, which is itself a lumber retailer.¹ Some of this wood was then sold to Whitecap Investment Corporation d/b/a Paradise Lumber ("Whitecap").

On October 1, 2012, a number of consumers who purchased wood from Whitecap filed the instant action against various defendants, including the Putnam Entities and Great Southern (the "*Chapin* action"). The plaintiffs alleged that the wood they

¹ Putnam Lumber & Export Company is the successor to Putnam Family.

purchased from Whitecap was initially sold to Whitecap by GSWP. They further alleged that the wood was "hazardous and defective" and prematurely decayed, causing damage to the buildings into which it had been incorporated.

Subsequently, the Putnam Entities asserted cross-claims against Great Southern in the *Chapin* action. Great Southern impleaded Whitecap as a third-party defendant. In response, Whitecap asserted third-party counterclaims against Great Southern.

On June 2, 2016, the Court held a status conference in this matter. At the conference, the parties advised the Court that they had entered a settlement agreement resolving all claims. Pursuant to that agreement, the parties executed mutual releases of any and all claims arising out of this matter and requested that all claims be dismissed with prejudice. On September 8, 2016, the Court entered Judgment and dismissed this case.

On September 20, 2016, seven plaintiffs that had been represented by attorney Lee J. Rohn ("Rohn") and the law firm Cuneo, Gilbert, & LaDuca, LLP, ("LaDuca")--Cary Chapin, Barb Douma, Marjorie Jones, Philip Jones, Pam Gaffin, Nina Hahler, and Deborah Ramsay (collectively, the "Chapin plaintiffs")--filed a motion captioned "Motion for Relief." See ECF No. 1818. On September 21, 2016, the Chapin plaintiffs filed a motion

captioned "Amended Motion for Relief." See ECF No. 1820. Both motions "sought relief from this Court arising from the LaDuca and Rohn firms' alleged expenses without supporting documentation and their failure/refusal to provide the method of calculation of fees and the apportionment of expenses." See ECF No. 1818 at 1; ECF No. 1820 at 1. The Chapin plaintiffs asked for (1) three weeks "to submit a grievance with respect to the disputed alleged expenses and attorney fees"; and (2) an order directing "that the disputed monies be placed in an escrow account of an independent agent or the Court's registry." See ECF No. 1818 at 2; ECF No. 1820 at 2.

On September 28, 2016, the Chapin plaintiffs filed a motion captioned "Emergency Motion to Deposit Settlement Proceeds into an Independent Account." See ECF No. 1826. The motion asserted that Rohn and the attorney's at DeLuca had violated ethical obligations in connection with their charged expenses as well as their accounting for and disbursing of proceeds from the settlement. The September 28, 2016, motion sought an order directing "the [settlement] funds to be deposited into an independent escrow account and the net proceeds to be distributed without delay to the Plaintiffs." See *id.* at 10.

On September 30, 2016, several other plaintiffs in this action filed a motion to strike the September 28, 2016, motion

of the Chapin plaintiffs. That motion argued that, after dismissing the case, "[t]he Court did not retain jurisdiction over any matter including any settlement, fee or expenses matter. As such, this case is closed and the Court has no jurisdiction to entertain the [September 28, 2016] [m]otion." See ECF no. 1828 at 2.

On July 20, 2017, the Court referred the above motions to the Magistrate Judge for a Report and Recommendation. On February 23, 2018, the Magistrate issued a Report and Recommendation recommending that the Court (1) find the motions of the Chapin plaintiffs moot; (2) deny the motion to strike; and (3) refer the Chapin plaintiff's allegations of misconduct to the Chief Judge pursuant to LRCi 83.2(b).

With respect to the motions to deposit funds filed by the Chapin plaintiffs, the Magistrate noted that an interpleader action had been commenced in the Superior Court of the Virgin Islands. In connection with that action, the funds allocated to the Chapin plaintiffs had been "deposited . . . into the registry of the Superior Court, and the Superior Court later allowed payment to be made to the members of the Chapin [plaintiffs] of the 'undisputed funds.'" See ECF No. 1883 at 4. As such, the Magistrate recommends that the Court find the motions to deposit funds moot. As to the motion for time to file

a grievance, the Magistrate noted that the Chapin plaintiffs had filed their grievance and had acknowledged that the motion was moot. The Magistrate recommends that the Court find this motion moot as well.

With respect to the motion to strike, the Magistrate noted that the proponents of the motion had not identified "any authority for striking the Chapin [plaintiffs'] motion from the docket." *See id.* at 5. Moreover, "this Court maintains jurisdiction to adjudicate complaints concerning the ethical conduct of attorneys who practice before it, notwithstanding the dismissal of an action." *See id.*

The Magistrate Judge found that the allegations of misconduct in the Chapin plaintiffs' filings, "if substantiated, would warrant discipline" and that the "applicable procedure" to address the allegations "is not otherwise mandated by [the Local] Rules [of Civil Procedure of the District Court of the Virgin Islands]." *See* LRCi 83.2(b). The Magistrate recommended "that no further action be taken in Civil Action 2012-77 . . . but that the Chief Judge be informed of the issues raised" in the Chapin plaintiffs' filings. *See* ECF No. 1883 at 5.

No party has filed an objection to the Magistrate's Report and Recommendation.

Litigants may make "specific written objections" to a magistrate judge's report and recommendation "[w]ithin 14 days after being served with a copy of the recommended disposition." See Fed. R. Civ. P. 72(b)(2); see also 28 U.S.C. § 636(b)(1) ("Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.").

When a party makes a timely objection, the district court "make[s] a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* When no objection to a magistrate's report and recommendation is made the district court reviews the report and recommendation for plain error. See *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) ("While . . . [28 U.S.C. § 636(b)(1)] may not require, in the absence of objections, the district court to review the magistrate's report before accepting it, we believe that the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report."); see also *Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) *aff'd*, 276 Fed. App'x 125 (3d Cir. 2008) (explaining that, by failing to object to a portion of a report and recommendation, the litigant "waived its right to have this Court conduct a *de novo* review," and that in

those circumstances, "the scope of [the court's] review is far more limited and is conducted under the far more deferential standard of 'plain error' ").

Having reviewed the record and the Report and Recommendation, the Court finds no error.

The premises considered, it is hereby

ORDERED that the Report and Recommendation docketed at ECF Number 1883 is **ADOPTED**; it is further

ORDERED that the motions docketed at ECF Numbers 1818, 1820, and 1826 are **MOOT**; it is further

ORDERED that the motion to strike docketed at ECF Number 1828 is **DENIED**; and it is further

ORDERED that the Clerk of Court shall inform the Chief Judge of the misconduct alleged by the Chapin plaintiffs.

s\ _____
Curtis V. Gómez
District Judge